

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 17. TRANSPORTATION

#### CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

[R05-464]

*Editor's Note: This rulemaking package is published as submitted by the agency. This agency did not use the most current rule text as published in the Administrative Code in this proposed rulemaking package.*

#### PREAMBLE

**1. Sections affected:**

R17-5-202  
R17-5-203  
R17-5-209

**Rulemaking Action:**

Amend  
Amend  
Amend

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-5204 and 28-5235

**3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 11 A.A.R. 5411, December 23, 2005

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Troy A. Walters, Rules Analyst  
Address: Administrative Rules Unit  
Department of Transportation, Mail Drop 530M  
1801 W. Jefferson St., Suite 407  
Phoenix, AZ 85007  
Telephone: (602) 712-8994  
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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at [www.azdot.gov/mvd/mvdrules/rules.asp](http://www.azdot.gov/mvd/mvdrules/rules.asp).

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

MVD engages in this rulemaking to incorporate sections of the 2005 edition of the 49 CFR by reference into Arizona Motor Carrier Safety and Hazardous Materials Transportation administrative rules. This rulemaking does not arise from a 5-year review but is an annual update.

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6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

The agency did not rely on any study for this rulemaking.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The economic impact of this rulemaking is negligible. No substantial changes have been introduced since the last rulemaking.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Questions concerning the economic impact statement may be directed to the officer listed in item #4.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled for this rulemaking. An interested person may request an oral proceeding through the officer listed in item #4. If no oral proceeding is requested, the public record for this rulemaking will close at 4:30 p.m. on January 23, 2006.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

In R17-5-202, subsection (A):

49 CFR Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published October 1, 2005.

In R17-5-209, subsection (A):

49 CFR Parts 107, 171, 172, 173, 177, 178, and 180, published October 1, 2005.

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION  
COMMERCIAL PROGRAMS

ARTICLE 2. MOTOR CARRIERS

Section

- R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Application  
R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information  
R17-5-209. Hazardous Materials Transportation

ARTICLE 2. MOTOR CARRIERS

**R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Application**

- A. The Division incorporates by reference 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published ~~October 1, 2003~~ October 1, 2005, and no later amendments or editions, as amended by R17-5-202 through R17-5-208. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-0001, and is on file with the Division.
- B. The regulations of 49 CFR, incorporated by subsection (A), apply as amended by R17-5-203 through R17-5-208 to:
1. A motor carrier as defined in A.R.S. § 28-5201 except a motor carrier transporting passengers for hire in a motor vehicle with a design capacity of six or fewer persons.
  2. A vehicle owned or operated by the state, a political subdivision, or a public authority of the state that is used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.

**R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information**

**A. 49 CFR 390.3 General applicability is amended as follows:**

1. Paragraph (a) is amended to read:  
Regulations incorporated in this Section are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.
2. Paragraph (b) is amended to read:  
A motor carrier driver domiciled in Arizona who operates a commercial motor vehicle defined in A.R.S. § 28-3001 shall comply with the requirements of A.R.S. Title 28, Chapter 8 and any rule made under that Chapter.
3. Paragraph (c) is amended to read:  
A motor carrier operating in Arizona in furtherance of a commercial enterprise, shall comply with the financial responsibility requirement specified in A.R.S. Title 28, Chapter 9, Article 2, and 49 CFR 387.
4. Paragraph (f)(6) is deleted.

**B. 49 CFR 390.5 Definitions. The definitions listed in 49 CFR 390.5 are amended as follows:**

1. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the controlled substances and alcohol use and testing requirement of 49 CFR 382, the term has the meaning prescribed in 49 CFR 382.107.
2. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the licensing requirements prescribed under A.R.S. § 28-3223, the term has the meaning prescribed under A.R.S. § 28-3001.
3. If the term "Commercial Motor Vehicle" or "CMV" is not used in reference to the controlled substances and alcohol use and testing requirement of 49 CFR 382 or the licensing requirement prescribed under A.R.S. § 28-3223, the term means a self-propelled, motor-driven vehicle or vehicle combination, used on a public highway in this state in furtherance of a commercial enterprise that:
  - a. Has a gross vehicle weight rating (GVWR) as a single vehicle or a gross combination weight rating (GCWR) of 18,001 pounds or more for purposes of intrastate commerce;
  - b. Transports passengers for hire and has a design capacity of ~~seven~~ eight or more persons; or
  - c. Transports a hazardous material in an amount requiring marking or placarding as prescribed in R17-5-209;
  - d. Is not an intrastate-operating tow truck that has a GVWR up to 26,000 pounds, but a tow truck operator remains subject to all other provisions prescribed under 49 CFR 391.41, 391.43, 391.45, 391.47, and 391.49; and
  - e. Operates for purposes of interstate commerce with a GVWR of greater than ~~40,001~~ 10,000 pounds.
4. "Exempt intracity zone" is deleted and has no application in R17-5-203 through R17-5-206.
5. "For-hire motor carrier," "private motor carrier," "private motor carrier of passengers (business)," and "private motor carrier of passengers (nonbusiness)" are deleted from R17-5-203 through R17-5-206 and the term "motor carrier" is substituted.
6. "Gross vehicle weight rating (GVWR)" is amended by adding:  
In the absence of a value specified by the manufacturer ~~and~~ and/or the vehicle identification number, law enforcement shall use a vehicle's actual gross weight or declared gross weight to determine the GVWR.
7. "Regional Director of Motor Carriers" means the Division Director of the Arizona Department of Transportation, Motor Vehicle Division.
8. "Special agent" means an officer or agent of the Department of Public Safety, the Division, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.
9. "State" means a state of the United States or the District of Columbia.
10. "Tow truck," as used in the definition of emergency in 49 CFR 390.5, has the meaning prescribed under A.A.C. R13-3-101.

**C. 49 CFR 390.15 Assistance in investigations and special studies. Paragraph (a) is amended to read:**

A motor carrier shall make all records and information pertaining to an accident available to a special agent upon request or as part of any inquiry within the time the request or inquiry specifies. A motor carrier shall give a special agent all reasonable assistance in the investigation of any accident including providing a full, true, and correct answer to any question of the inquiry.

**D. 49 CFR 390.21 Marking of CMVs. Paragraph (a) is amended to read:**

This Section applies to all motor carrier vehicles operated in Arizona. A motor carrier not subject to U.S. Department of Transportation marking requirements shall mark its vehicle with the:

1. Company name, or
2. Business trade name, and
3. City and state.

**E. 49 CFR 390.23 Relief from regulations.**

1. Paragraph (a) is amended to read:  
Regulations contained in 49 CFR 390 through 397 do not apply to a motor carrier that:

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- a. Is exempt from federal jurisdiction, and
- b. Operates a commercial motor vehicle used or designated to provide relief during an emergency.
2. Paragraphs (a)(1), (a)(1)(i), (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii) are deleted.
3. Paragraph (a)(2)(i)(A) is amended as follows:  
An emergency has been declared by a federal, state, or local government official having authority to declare an emergency; and
4. Paragraph (a)(2)(i)(B) is amended as follows:  
The Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau determines a local emergency exists that justifies an exemption from any or all of these Parts. If the Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau determines relief from these regulations is necessary to provide vital service to the public, relief shall be granted with any restrictions the Arizona Department of Public Safety considers necessary.
5. "Interstate commerce" as used in paragraph (b) means engagement in a commercial enterprise.
- F. 49 CFR 390.25 Extension of relief from regulations - emergencies is amended as follows:  
A motor carrier seeking to extend a period of relief from these regulations shall obtain approval from the Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau. The motor carrier shall give full details of the additional relief requested. The Arizona Department of Public Safety shall observe time limits for emergency relief from regulations as prescribed under 49 CFR 390.23(a), but may extend a period of relief after considering:
  1. Severity of the emergency,
  2. Nature of relief services to be provided by the motor carrier, and
  3. Other restrictions that may be necessary.
- G. 49 CFR 390.27 Locations of motor carrier safety service centers is amended to read:  
A motor carrier requesting relief from these regulations shall contact the Arizona Department of Public Safety, Commercial Vehicle Enforcement Bureau, Telephone (602) 223-2522.

**R17-5-209. Hazardous Materials Transportation**

- A. Incorporation of federal regulations.
  1. The Motor Vehicle Division incorporates the following portions of the Federal Hazardous Materials Regulations by reference. Materials incorporated by reference are on file in the Secretary of State's Office. The incorporated Hazardous Materials Regulations are published in 49 CFR, Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Research and Special Programs Administration, Department of Transportation:
    - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
    - b. Subchapter C - Hazardous Materials Regulations; Parts:
      - i. 171 - General information, regulations, and definitions;
      - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements;
      - iii. 173 - Shippers - general requirements for shipments and packagings;
      - iv. 177 - Carriage by public highway;
      - v. 178 - Specifications for packagings; and
      - vi. 180 - Continuing qualification and maintenance of packagings.
  2. These parts are incorporated as printed in the October 1, 2002 edition, and those sections of the October 1, 1991 edition authorized for use under the transitional provisions of Section 171.14 of the October 1, 2002 edition October 1, 2005 edition.
- B. Application and exceptions.
  1. Application.
    - a. Regulations incorporated in subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined in A.R.S. § 28-5201.
    - b. Regulations incorporated in subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
  2. Exceptions. An authorized emergency vehicle, as defined in A.R.S. § 28-101, is excepted from the provisions of this Section.
- C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:
  1. Part 171. General information, regulations, and definitions.
    - a. Section 171.1 Purpose and scope.  
Paragraph (a) is amended to read:  
"The transportation of hazardous materials by and their offering to: (1) interstate, intrastate, and foreign motor carriers; and (2) vehicles owned or operated by the state, a political subdivision or a state public authority, which

- are used to transport hazardous material.”
- b. Section 171.8 Definitions and abbreviations. Section 171.8 is amended by revising the definitions for “Carrier,” “Hazmat employer,” and “Person,” and adding a definition for “Highway” as follows:  
    “‘Carrier’ means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.”  
    “‘Hazmat employer’ means a person who uses one or more of its employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined in A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.”  
    “‘Highway’ means a public highway defined in A.R.S. § 28-5201.”  
    “‘Person’ has the same meaning as in A.R.S. § 28-5201.”
  2. Part 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements.  
    Section 172.3 Applicability.  
    Paragraph (a)(2) is amended to read:  
    “Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway.”
  3. Part 177. Carriage by public highway.
    - a. Section 177.800 Purpose and scope of this part and responsibility for compliance and training.  
    In paragraph (a), the phrase “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”
    - b. Section 177.802 Inspection. Section 177.802 is amended to read: “Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed in A.R.S. §§ 28-5204 and 28-5231.”